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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,012	09/26/2003	Reiko Koshida	AD6757 US CNT	9514

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EXAMINER

ZACHARIA, RAMSEY E

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/673,012	Applicant(s) KOSHIDA ET AL.	
	Examiner Ramsey Zacharia	Art Unit 1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-9 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/13/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Specification*

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 2, 5-9, 12, 14, and 16 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for black colorants wherein the ratio of anthraquinone dye to monoazo complex dye is up to 5:1, does not reasonably provide enablement for black colorants wherein this ratio is greater than 5:1. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. According to the instant specification, a black colorant cannot be obtained if the ratio exceeds 5:1 (see page 15, lines 21-24).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 13, 15, 17, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 13, 15, 17, and 18 are rendered indefinite because it is unclear whether the ratios recited in the claims are weight ratios, mole ratios, volume ratios, etc.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5, 7, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Balliello et al. (U.S. Patent 4,944,768).

Balliello et al. teach a dye composition that may be used for dyeing polyamides (column 1, lines 9-13). The dye composition comprises a mixture of at least two dyes (column 1, lines 52-61). Suitable dyes include 1:2 metal complex azo dyes (column 3, line 41-column 6, line 51) and anthraquinone dyes (column 6, line 52-column 7, line 31).

Regarding the limitation in claims 1 and 7 that the article is "for laser beam welding", it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

***Claim Rejections - 35 USC § 102 / 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 8 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Balliello et al. (U.S. Patent 4,944,768).

Balleillo et al. teach an article of dyed polyamide meeting all the limitations of claim 8, as outlined above, except for teaching that the article is formed by laser welding. However, this is a product-by-process type of limitation, i.e. the product is claimed by the process (laser welding) by which it is made.

When the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F. 2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F. 2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F. 2d 742, 180 USPQ 324 (CCPA 1974). Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) and MPEP §

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2113. In this case, although the article of Balliello et al. is not formed by laser welding as recited in claim 8, the resulting article appears to be the same claim 8 does not provide for any structural limitations to the article.

*Claim Rejections - 35 USC § 103*

11. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balliello et al. (U.S. Patent 4,944,768).

Balliello et al. teach all the limitations of claims 17 and 18, as outlined above, except for teaching the ratio at which the dyes are to be mixed.

However, the ratio of the dyes in the dye composition will affect the color of the resulting dye mixture. That is, the ratio is a results effective variable that affects the dye composition color. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the ratio of dyes in the mixture depending on the desired color of the dye composition, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balliello et al. (U.S. Patent 4,944,768) in view of the Encyclopedia of Polymer Science and Engineering (Volume 11: Polyamides).

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Balliello et al. teach all the limitations of claim 6, as outlined above, except for the inclusion of a reinforcing agent. However, the dye composition is taught as being useable with polyamides.

The Encyclopedia of Polymer Science and Engineering discloses that it is known to add reinforcing fillers to nylons (i.e. polyamides) to improve their performance and usefulness (page 316).

One of ordinary skill in the art would be motivated to add a reinforcing filler to the polyamide taught by Balliello et al. to improve its performance and usefulness.

*Allowable Subject Matter*

13. Claims 13 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter.

The inventions of claims 13 and 15 are directed to a black colorant and a thermoplastic resin composition comprising said colorant. The colorant comprises a mixture of an amine salt of an anthraquinone dye of formula [I] or [II] as claimed and a monoazo metal complex dye of formula [III] as claimed in a ratio of 5:1 to 1:1.

Balliello et al. represents the closest prior art. However, Balliello et al. do not teach or fairly suggest using the particular amine salt of an anthraquinone dye and the particular monoazo metal complex dye as claimed by the applicant.

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*Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Zacharia whose telephone number is (571) 272-1518.

The examiner can normally be reached on Monday through Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Ramsey Zacharia**  
**Primary Examiner**  
**Tech Center 1700**